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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Yolo)

THE PEOPLE,

Plaintiff and Respondent,

v.

PORFIRIO MORALES,

Defendant and Appellant.

C081063

(Super. Ct. No. CRF153595)

Appointed counsel for defendant Porfirio Morales has asked this court to review the record to determine whether there exist any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment and direct the trial court to correct an error in the abstract of judgment.

We provide the following brief description of the facts and procedural history of the case. (See *People v. Kelly* (2006) 40 Cal.4th 106, 110, 124.)

On July 27, 2015, defendant was charged by information with transporting a controlled substance (Health & Saf. Code, § 11379, subd. (a)--count 1), possession for sale of a controlled substance (Health & Saf. Code, § 11378--count 2), conspiracy to commit a felony violation of Health and Safety Code section 11379 (Pen. Code, § 182, subd. (a)(1)--count 3), transportation for sale of a controlled substance from one county to a non-contiguous county (Health & Saf. Code, § 11379, subd. (b)--count 4), and possession of ammunition by a person prohibited from owning or possessing a firearm (Pen. Code, § 30305, subd. (a)--count 5).¹ The information alleged the weight of the controlled substance involved in counts 1, 2, and 4 exceeded 28.5 grams or more of methamphetamine and 57 grams or more of a substance containing methamphetamine (§ 1203.073, subd. (b)(2)) and that defendant served a prior prison term (§ 667.5, subd. (b)).

On October 15, 2015, after commencement of a jury trial, defendant entered a negotiated plea of no contest to counts 2 and 5 and admitted the prior prison term in exchange for a stipulated sentence of three years eight months in state prison and dismissal of all remaining charges and allegations. The parties stipulated the transcript of the preliminary hearing sufficed as the factual basis for the plea.

On November 20, 2015, the trial court sentenced defendant to serve 3 years 8 months in state prison, comprised of the middle term of 2 years for count 5, plus 8 months (one-third the middle term) for count 2 and one year for the prior prison term. The court imposed a \$300 restitution fine (§ 1202.4), a \$300 parole revocation fine, stayed pending successful completion of parole (§ 1202.45), an \$80 court operations assessment (§ 1465.8), and a \$60 criminal conviction assessment (Gov. Code, § 70373,

¹ Undesignated statutory references are to the Penal Code.

subd. (a)(1)), and awarded defendant 561 days of presentence custody credit (281 actual days plus 280 days of conduct credit). The abstract of judgment reflects additional mandatory fees, fines, and assessments imposed.

Defendant filed a timely notice of appeal. The trial court denied his request for a certificate of probable cause. Thereafter, defendant's counsel filed a second notice of appeal.

Counsel filed an opening brief that sets forth the facts of the case and requests that we review the record and determine whether there are any arguable issues on appeal. (*People v. Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

We note, however, a discrepancy between the oral pronouncement of judgment and the abstract of judgment. The trial court imposed an \$80 court operations assessment pursuant to section 1465.8 (\$40 per count), and a \$60 criminal conviction assessment pursuant to Government Code section 70373, subdivision (a)(1) (\$30 per count). However, the abstract reflects a \$40 court operations assessment and \$30 criminal conviction assessment. Where there is a discrepancy between the oral pronouncement of judgment and the abstract of judgment, the oral pronouncement controls. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185-186; *People v. Mesa* (1975) 14 Cal.3d 466, 471.) Under our inherent authority to correct such clerical errors (*People v. Rowland* (1988) 206 Cal.App.3d 119, 123; *People v. Anthony* (1986) 185 Cal.App.3d 1114, 1125-1126), we order the court records modified to conform to the trial court's oral pronouncement of judgment.

DISPOSITION

The judgment is affirmed. We direct the trial court to prepare a corrected abstract of judgment to reflect imposition of an \$80 court operations assessment pursuant to Penal Code section 1465.8 and a \$60 criminal conviction assessment pursuant to Government Code section 70373, subdivision (a)(1), and to deliver a certified copy of the corrected abstract to the Department of Corrections and Rehabilitation.

_____/s/
HOCH, J.

We concur:

_____/s/
BUTZ, Acting P. J.

_____/s/
RENNER, J.